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HUMAN RIGHTS COMMITTEE

Sixty-fourth session

SUMMARY RECORD OF THE 1719th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 October 1998, at 3 p.m.

Chairperson: Mr. BHAGWATI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-19293 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Austria (CCPR/C/83/Add.3, CCPR/C/64/Q/AUS/1; HRI/Corr.1/Add.8) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Austria resumed their places at the Committee table.

2. Mr. EL SHAFEI said he was somewhat concerned to see that Austria seemed to be taking a more restrictive approach in regard to the status of the Covenant than it had shown in 1991 at the time its second periodic report (CCPR/C/51/Add.2) was being considered. He feared that might mean that in future the Committee would not have as fruitful a dialogue with the delegation as it might wish.

3. In 1991, the Austrian delegation had stated that the Covenant, though not an integral part of domestic law, was recognized as an instrument prescribing obligations under public international law to ensure that any person whose rights or freedoms had been violated could have effective remedies. It had further stated that Austria was prepared to change its domestic legislation to provide for new remedies proposed by the Committee, in the same way as it had done in respect of decisions of the European Court on earlier occasions. Today, however, the delegation had informed the Committee that Parliament had decided that there was no need to incorporate the Covenant in domestic law, since that law already complied with its requirements.

4. Actually, the provisions of the Covenant, and in particular articles 24, 25 and 26, went beyond those of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The delegate had earlier referred to three different levels or degrees of protection of human rights, the national level (domestic law), the European level (the European Convention) and the international level (the Covenant). Since the Covenant afforded the highest degree of protection of the three, he failed to see why it should not be incorporated in Austrian law.

5. The Committee on Economic, Social and Cultural Rights, had noted in its concluding observations on Austria's report that the provisions of universal human rights instruments could not be directly invoked before the Austrian courts, unlike the provisions of the European Convention, which had been incorporated in domestic legislation and had the force of constitutional law. It had gone on to express its concern that, in the event of a conflict between the provisions of the Covenant and those of domestic law, international obligations entered into under the Covenant might not be fulfilled. The Human Rights Committee shared that concern.

6. Mr. PRADO VALLEJO commended the report, which was comprehensive and met the requirements of the Committee's guidelines. Referring to the questions raised under paragraph 4 of the list of issues (CCPR/C/64/Q/AUS/1), he noted that no fewer than 10 paragraphs of the report were devoted to the expulsion of aliens, which indicated that Austrian legislation provided for an unduly

large number of grounds for such expulsion. He would appreciate clarification of what was meant by the statement in paragraph 89 of the report (CCPR/C/83/Add.3) that deportation was admissible if a person constituted a danger to the "liberty" of the Republic of Austria, and also the statement in paragraph 87 that foreigners might be compelled to leave the country if considered necessary on grounds of maintaining public peace.

7. Paragraph 93 stated that foreigners could be expelled "by simple administrative decision", and paragraph 94 seemed to indicate that if the expulsion had been issued in the interests of public order, the foreigner would not have the right of appeal. That was not consistent with article 13 of the Covenant, which required that an alien should have the right to submit reasons against his expulsion and to have his case reviewed. He would like to know what the rules were in Austria on right of asylum, since no mention was made of the subject in the report. Was a person who had been granted asylum in Austria entitled to reunification with his family?

8. Mr. POCAR noted that Austria, like other European countries, had a tendency to lend more weight to the European Convention than to the Covenant, which could lead to difficult situations and could raise problems in certain cases. He could not accept the statement in paragraph 31 of the report that, since Austrian law did not provide for times of public emergency, article 4 of the Covenant was not applicable. Article 4 set out an international obligation, even if it had not been incorporated in international law.

9. Presumably, if an emergency did arise, the authorities would act under the relevant provisions of article 15 of the European Convention. However, they would also have an international obligation to observe article 4 of the Covenant. The difficulty was that the requirements for dealing with emergencies were different in each instrument, in regard both to the list of non-derogable rights and to the non-discrimination clause. How could the Austrian courts check whether the restrictions imposed by the authorities in such circumstances were compatible with article 4 of the Covenant, and what remedy would be available to anyone who considered that his rights under that article had been infringed?

10. As to article 3 of the Covenant, it was apparent from paragraph 14 of the report that the Equal Treatment Act of 1979 provided for equality in private employment, and from paragraph 16 that the Federal Equal Treatment Act of 1993 extended that regime to civil servants. In the course of its dialogue with the Committee in 1991, the Austrian delegation had said that equal pay for equal work was not yet guaranteed, which seemed to imply that the 1979 Act had not been effective. He would appreciate clarification of the statement in paragraph 25 that "similar" provisions now applied in the field of private employment.

11. In relation to communications under the Optional Protocol, he recalled that, at the time the previous report had been considered, the delegation had stated that, if the Committee's Views should establish a violation, domestic legislation would have to be changed to provide a new remedy or to give effect to an existing one. Had any such changes been made, particularly in the case of Pauger (Communication No. 415/1990), where a violation had been found? In

1992 Austria, in the course of the follow-up procedure, had indicated that no compensation could be paid to the author "for lack of specific enabling legislation". Had such legislation now been introduced?

12. Ms. Chanet took the Chair.

13. Mr. ANDO said he associated himself with Mr. Scheinin in asking why the report had been so long delayed, in the light of Austria's good record in the human rights field.

14. Both in paragraph 34 of the core document (HRI/CORE/1/Add.8) and in paragraph 8 of the report, reference was made to "autonomous administrative tribunals". As he understood it, cases between individuals would go before the ordinary courts and eventually to the Supreme Court. If the case involved the actions of an administrative organ, it would go before the administrative courts, and if it concerned the legality of a particular decision, to an administrative tribunal. Issues pertaining to the constitutionality of the law on which a decision was based would go before the Constitutional Court. What was the relationship between the Constitutional Court and the Supreme Court?

15. In regard to Austria's reservation concerning article 10, paragraph 2 (b) of the Covenant, the delegation had stated that juveniles were not placed with adults, but that adults could exceptionally be placed with juveniles. How was it decided that an adult under the age of 25 should be placed in the juvenile section of a prison, and was there any remedy against that decision?

16. Lastly, what was the general position of the Austrian Government concerning implementation of the Committee's Views?

17. Mr. LALLAH said other members had already explained why it was important, although not specifically required, for all the provisions of the Covenant to be integrated in some way into internal law. As had been pointed out, Austria might experience difficulty in finding a remedy for failure to comply with its obligations under article 4 of the Covenant. In his view, that also applied to article 27: the legislation relating to national minorities circulated earlier by the delegation did not in fact meet Austria's obligations under that article, which covered all minorities, whether legislatively recognized or not. Austria gave statutory status to only five minorities. What was the situation in regard to other minorities or groups not so recognized, particularly in the matter of statutory rights?

18. The Committee believed that reporting by States parties should not be a mere exercise, but that reports made should be widely discussed within the country itself, for which purpose publicity was essential. Was the Austrian public aware of the reporting process and in particular of the availability of assistance to help States parties fulfil their obligations under an instrument freely adhered to?

19. The CHAIRPERSON invited the delegation to respond to questions raised.

20. Mr. BERCHTOLD (Austria), responding to Lord Colville's comment that more statistics should have been provided in the report, said additional statistics could certainly be given in the next report. There was normally a gap of two years between the drafting of a report and its consideration by the Committee, however, and that precluded giving the very latest figures.

21. A number of members had raised the issue of the incorporation of the Covenant in domestic law. Austria was not, he was sure, the only country in which that had not been done. When Parliament had adopted the Covenant 20 years ago, that matter had been debated at length, and he did not think the outcome of a discussion would be any different now. He would nonetheless inform his Government of the Committee's opinion.

22. Austria regarded the Committee's views on communications from individuals, as in the Pauger case, as non-binding opinions, and did not think its obligations under the Covenant extended to acting in accordance with those views. It did, however, believe that such views should be taken duly into account. The legal problem in the Pauger case had been considered by the Constitutional Court, which had held, in a judgement deemed to be binding, that there had been no violation of the principle of equal treatment before the law. Mr. Pauger had not accepted that judgement and had submitted a communication to the Committee, which had taken a decision exactly opposite to that of the Constitutional Court. In that conflict of legislation, the binding judgement of the Constitutional Court had priority for Austria. That had been five years ago, however, and in the meantime, the situation had evolved and the problem of equal treatment of men and women had been resolved.

23. The creation of the autonomous administrative tribunals had been motivated by the desire to set up a system of administrative courts similar to that of the Länder in Germany. As an interim measure, it had been decided to establish bodies that were administrative in nature, yet independent, leaving the creation of a real court system for the future. The autonomous administrative tribunals were not bound by instructions from any administrative body and members had to be appointed for at least six years. It was hoped that, in creating those bodies, Austria was acting in compliance with article 14 of the Covenant, but that could not yet be determined, since no case law had yet been generated by the autonomous administrative tribunals. That was why Austria could not yet withdraw its reservations to the Covenant.

24. Mr. Buergenthal had drawn attention to the statement in paragraph 83 of the report that to prohibit an Austrian national from returning to Austria was unconstitutional. The reason was the need for alignment with the fourth additional protocol to the European Convention on Human Rights, the provisions of which were directly applicable because, unlike the Covenant, that instrument was part of domestic law.

25. In response to Mr. Yalden's question on the creation of a national commission that would have competence to deal with alleged violations of human rights, he said the problem was that the courts in Austria performed that function and it was considered preferable for them to remain the only bodies with that mandate. Any human rights commission that might be set up should

not operate like a court or an appeals body. Rather, it could be a forum for the discussion of such matters as education and dissemination of information in the field of human rights.

26. There were no cases involving discrimination or human rights currently before the Ombudsman, because such cases were usually handled by the Constitutional Court, not by a body like the Ombudsman, which was not intended to serve as a court of appeal. Everyone had the right, however, to take a human rights problem to the Ombudsman, who then tried to find a solution with the authority concerned.

27. It had been remarked that, under the Constitution, equality before the law was guaranteed only to citizens. That was true according to the wording of the Constitution, but when Austria had ratified the International Convention on the Elimination of All Forms of Racial Discrimination, it had simultaneously enacted a constitutional law stipulating that aliens had to be treated on an equal basis under Austrian law. According to article 1, paragraph 2, of the International Convention, distinctions could be made between citizens and aliens. Military service, for example, was obligatory for Austrian citizens but not for aliens. Austrian law aimed at equal treatment of citizens inter se and of aliens inter se, but allowed for distinctions between the two groups. Hence Austria's reservation to the Covenant, in which it stated its understanding that article 26 did not exclude different treatment of Austrian nationals and aliens, as permitted under article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination.

28. The Rom had recently been recognized as an ethnic group. Many efforts had been made over the past year to improve housing and other facilities for them and they were now receiving financial subsidies. He undertook to ensure that more information was provided in Austria's next report on their situation. As for Mr. Lallah's comment about groups that were recognized as minorities, Austria did not consider that non-citizens who entered the country to work - for example, nationals of Turkey or the former Yugoslavia - constituted an ethnic group in the same sense as did Slovenes, Hungarians and other groups with which it had historical ties. Was that discrimination? Not according to Austria's interpretation of the International Convention on the Elimination of All Forms of Racial Discrimination, which he had just outlined.

29. He had no statistics on equal treatment of women, but could say that there was a commission on that question which functioned in much the same way as did the Ombudsman. It provided information and mediated cases, instead of handing down formal judgements. Special measures had been taken for the advancement of women, particularly in the ministries; when a man and a woman were on an equal footing in terms of their skills, priority for promotion had to be given to the woman.

30. The provision in the Penal Code whereby homosexual intercourse involving men under 18 years of age, but not women under 18, was a criminal matter could indeed be seen as discriminatory. In 1989 the Constitutional Court had ruled that the provision was not discriminatory. The situation had perhaps changed

in 10 years, but political opinion, as represented in Parliament, remained deeply divided over the issue. It had thus been impossible to modify the provision in question.

31. A number of members had asked why the report had been submitted later than scheduled. The process of preparing a report was enormously time-consuming, since the whole range of legislation had to be reviewed, with special emphasis on the latest enactments. Matters were not helped by frequent changes in the teams assigned to that job.

32. Mr. Pocar had raised an interesting legal point relating to states of emergency. Both the Covenant and the European Convention on Human Rights provided for restrictions on human rights in such instances.

33. Lastly, the Austrian legal system had not been modified in any way in the light of the Committee's concluding observations on the second periodic report.

34. Mr. MANOUET (Austria), referring to Lord Colville's question on what proof was required for accusations of ill-treatment, said that in order to convict a member of the police force for ill-treatment, the act had to be proven beyond reasonable doubt. If the accusation was unjustified, the accuser was committing the offence of slander or defamation. The proceedings against the police officer might have to be dismissed because of insufficient evidence, but it might not be possible to prove that the person who had made the accusation had done so with false intent.

35. The value of testimony given on the basis of ill-treatment or torture raised the question of how judges reached their decisions. They were completely free to determine the value of the evidence submitted. In the event of doubt about the validity of a confession, the court could not normally convict if the confession constituted the sole evidence. Sometimes, however, allegations of ill-treatment or torture in police custody might be proved, yet the confession itself was true. Each case had to be evaluated individually.

36. As to Mr. Klein's question on remuneration of detainees, a 1993 amendment to the Prison Code had considerably increased pay close to that of workers on the outside, but a large deduction was made as a contribution towards the execution of the sentence, leaving a net amount equivalent to 2 to 3 Swiss Francs an hour. In addition, working prisoners came under the social security and unemployment system, giving them 100 per cent cover, which was progress towards the rehabilitation and reintegration in society later on.

37. Regarding Mr. Yalden's query on sexual orientation, there was a problem in that the law punished sexual relations between men over the age of 19 with men under the age of 18. A vote on amendment in 1996 had been evenly divided and therefore the law had remained the same. However, a small change in the Penal Code in 1998 had improved the situation for homosexuals slightly. The privileges granted under the Penal Code and the Code of Criminal Procedure to "relatives" extended to people who lived together as life companions even if they were not married, and now included partners of the same gender.

38. In regard to the limited applicability of appeals under the Code of Criminal Procedure, paragraph 118 of the report described only one aspect of a two-pronged instrument. Certain criminal courts had two types of appeal, a remedy against the ruling and a plea of nullity; in other criminal courts the appeal had both functions.

39. Persons in prison could work for private firms, with their production based inside the prison, but they were exclusively subject to the orders of the prison authorities. Sterilization of the mentally disabled was permissible only with a court order. A further limitation on the admissibility of such action was currently under consideration. As to Mr. Ando's question about remedies for adults assigned to juvenile prisons, if the person was already an adult at the time he was convicted the decision was taken by the court itself; if he went to prison as a juvenile but became an adult while serving his sentence, the decision lay with the prison director or with the Ministry of Justice. There was no specific remedy, but inmates who so wished could request a transfer, which, if denied, could be appealed to the Supreme Administrative Court.

40. Mr. SZYMANSKI (Austria), replying to Mr. Klein's query, said that Austrian law did not explicitly cover the question of shooting to kill. Under a general provision, the police had the power to take the appropriate measures to lead to a just and equitable decision balancing the act and the punishment. The relevant part of the Penal Code was the "right to self-defence" rather than the law on public security. Anyone held in police custody was given an information sheet in a language he could read, which he signed in order to confirm that he had indeed understood the sheet. Those who could not read had their rights read out to them, and where necessary the services of an interpreter were used.

41. With reference to Mr. Buergenthal's point, in the context of article 12, paragraph 4, the right of long-term residents to remain in the country was resolved in the new Foreign Residence Act. After 8 to 10 years, unless convicted of a major crime, the foreign national was fully entitled to live in Austria and the right of residence for those of the second generation who arrived as children or were born in the country was guaranteed.

42. In connection with Mr. Scheinin's query about non-expulsion and to a decision of the Human Rights Committee similar to a decision of the European Court, it fell within the discretionary powers of the Government to accept a provisional decision of the Human Rights Committee as if it were the jurisprudence of the European Court of Human Rights. The Ahmed case was special, since it had been an anticipatory decision. In other words, the Court had ruled that expulsion would be a breach of article 3 of the European Convention on Human Rights and had done so at a time when Austria had not intended to expel Ahmed. Obviously, following that ruling there had been no question of deporting him. Ahmed, a Somali had been sentenced to two years in prison for a hold-up. His right of asylum in Austria had been withdrawn and an order issuing a prohibition on residence had been upheld by the Administrative Court. There had, however, been no intention to expel him; under Austrian procedure it was possible for a foreigner under a "prohibition of residence" to claim protection under "non-expulsion to a named country". An Administrative Decree confirming special protection by non-expulsion had been

issued prior to the Court's ruling. However, Austria still considered that someone sentenced to two years in prison could not regularize his status with a residence permit. Therefore, the special status suspending expulsion could be extended only one year at a time.

43. The first draft of a paper on the strategy regarding immigrants in the European Union had caused something of a stir in member countries as far as Austrian legislation on asylum was concerned, since it implied that Austria intended to withdraw from the Geneva Convention. That was no longer true, and a new, clearer paper had been presented. In any event, the first one had been a policy draft with no legal value.

44. The question of asylum legislation and safe third countries had been resolved to the satisfaction of the Austrian Government and UNHCR after lengthy talks. Section 4 of the Austrian Asylum Act set out a general provision for assessing the safety of a third country: the applicant had to be able to return to his country of origin, be protected against expulsion, have full access to asylum procedures, and the right to residence during those procedures. A text accompanying the Act, not the law itself, when put to Parliament, had considered all the countries bordering on Austria as safe third countries. A law had come into force on 1 January 1988, since which date an Autonomous Administrative Court on Asylum Law had examined asylum matters very carefully. Every asylum seeker could appeal to that administrative body, which ruled on the safety of a named third country in specific cases. It had rescinded many of the decisions of lower courts, but had never stated that any country bordering on Austria was not safe.

45. As to Mr. Wieruszewski's query on article 10, foreign nationals could be held in administrative detention either to ensure the expulsion procedure could be carried out or to make sure they could be taken to the border. In both cases they had the right to appeal to the autonomous administrative authority, which had to rule within six days as to whether the detention was lawful. The "appropriate supervisory authorities", mentioned in paragraph 76 of the report, meant in the first instance the police authorities. The 1993 Code of Ethics set out guidelines for police conduct. Any person who felt his rights had been infringed could bring a complaint to the autonomous administrative authority.

46. As Mr. Prado Vallejo had said, paragraphs 85 to 94 were difficult to understand. For example, paragraph 89 referred to the deportation of foreigners who were a danger to the "liberty" of the Republic, which should have read "security" of the Republic, as specified in Austrian legislation, and in article 33, paragraph 2, of the Convention relating to the Status of Refugees. Again it had also been suggested that the paragraphs in question referred to provisions that exaggerated the possibility of expulsion. The report was certainly not clear and could have been worded better. It should be pointed out that an administrative order was needed to deport aliens. An appeal against an administrative order could be made to another administrative authority and ultimately to the Constitutional Court or to the Administrative Court, whereupon the order would be final. A distinction should be drawn between deportation and expulsion procedures, which could normally be carried out only with an administrative order not subject to appeal. If the authority ruled that no appeal would have suspensive effect, the alien could still

appeal to the Constitutional Court or the Administrative Court, but was obliged to leave Austria following the first decision and await the appeal verdict abroad. That provision was consistent with article 1, paragraph 2, of Additional Protocol No. 7 to the European Convention.

47. Mr. Prado Vallejo had queried the lack of information on asylum in the report. Actually the right to asylum was regulated wholly in conformity with the Geneva Convention, article 1 of which governed asylum and was explicitly mentioned in the 1997 Asylum Act.

48. All foreign residents in Austria were afforded the opportunity of family reunification, which was entirely separate from the issue of asylum. There was also a specific regulation that covered the spouse and children of anyone who had been granted asylum, if they had not made individual claims. Once asylum was extended to the spouse or children, they benefited from it on an equal footing with the original claimant.

49. Mr. KLEIN, referring to the Pauger case, said that, while the Committee's Views might not have the same status as judgements of the European Court of Human Rights, they were not entirely devoid of legal consequences. He failed to see why a conflict should arise between a binding judgement of the Constitutional Court to the effect that there had been no violation and the Committee's finding of a violation. The Constitutional Court's judgement related to Austrian law, while the Committee's finding related to international law. It was a shortcoming of Austrian law that compensation could only be paid for breaches of domestic law, since there was no provision for an effective response to a breach of Austria's international obligations.

50. Ms. EVATT said that the Covenant permitted distinctions to be made between nationals and aliens in the enjoyment of rights only in very limited circumstances such as those specified in article 25. She wished to know, with reference to article 2, paragraph 1, in what respect nationality was a factor conducive to differentiation in the enjoyment of other rights under the Covenant.

51. In her view, an application to quash a conviction did not necessarily mean the same thing as filing an appeal against a conviction.

52. Lord COLVILLE said he understood that, when confessions were extracted under duress, the police officer concerned would be punished and that such allegations were dealt with on a case-by-case basis. But the delegation had not commented on the principle that the prosecution should be required to prove that a confession had not been extorted under duress.

53. Mr. BERCHTOLD (Austria) said he appreciated Mr. Klein's argument that there was no conflict between the different findings of the Constitutional Court and the Committee. However, it had been difficult for the Austrian authorities to accept the fact that the two bodies had come to opposite conclusions in their assessment of whether the principle of equality before the law had been breached.

54. The legal status of aliens and citizens was different in every country. In some cases, aliens benefited from the distinction drawn between them, for example release from military service and exemption from certain taxes. That was the reasoning behind Austria's reservation to article 26. He was convinced that no country could possibly guarantee full equality before the law, regardless of citizenship.

55. Mr. MANQUET (Austria) said that, in his view, the Covenant did not require proof beyond reasonable doubt that evidence had not been obtained through torture or ill-treatment. Where a confession was the only evidence available and there was even a shadow of doubt about its validity, it could not constitute grounds for a conviction. The preliminary draft amendment to the Code of Criminal Procedure provided, in principle, for the quashing of a conviction obtained as a result of ill-treatment or torture, but the new rules of evidence had not as yet been finalized.

56. Mr. SZYMANSKI (Austria), replying to the question in paragraph 5 (a) of the list of issues, said that, under a law which had entered into force on 1 January 1997, conscientious objectors were no longer subjected to an examination. They were relieved from military service and assigned to nine months' civilian service solely on the basis of a statement on their part.

57. Mr. BERCHTOLD (Austria), replying to the questions in paragraph 5 (b) of the list of issues, said that the second half of paragraph 196 of the report was extremely misleading and should be deleted. The Constitutional Court had stated in a 1955 judgement that the term "public order" was not, in its view, identical to that of "legal order" because legislation could then be used to abolish or restrict the constitutionally guaranteed freedom of religion set out in article 63 of the Treaty of Saint-Germain-en-Laye. The term public order referred rather to the substance of the principles governing the legal order, including those of freedom of creed and conscience. In practice, public order had not featured prominently in any matter relating to the free exercise of a creed, religion or belief and there were no relevant Constitutional Court judgements.

58. With reference to the question in paragraph 6 of the list of issues, a new law concerning regional and local radio stations had been enacted in 1997, terminating the monopoly of the public broadcasting service (ORF). The idea was that there should be at least one private broadcasting station in every Land. Although there were plans to enact a similar law concerning television broadcasting in 1999, it was questionable whether such a small country as Austria could sustain more than two or three costly television channels. There had been keen competition for radio licences, which were limited by the number of broadcasting frequencies available. Only three or four private radio stations had come on the air to date. All other applicants - some 150 - were involved in proceedings before the Constitutional Court to determine whether the licensing procedure had been lawful. Their cases would probably be decided in 1999.

59. Mr. MANQUET (Austria) said that Austrian anti-trust legislation, particularly the Cartels Act, had been amended in 1993. The Cartel Court issued orders, if necessary for the dismantling of cartels, against

enterprises that abused their dominant position in the market. Specific procedures were prescribed for mergers of media enterprises and certain mergers could be prohibited in the interest of diversity.

60. Mr. BUERGENTHAL said he strongly supported Mr. Klein's comment on the legal effect of the Committee's Views.

61. Had Austria applied any legislation or administrative rules or practices to the activities of religious cults? It was his understanding that in 1997 the Government had conducted an information campaign against religious sects.

62. There was no reference in the report to the activities of groups that perpetrated hate crimes and acts of vandalism such as the desecration of Jewish cemeteries and incitement to racial and religious hatred or violence. How were the authorities dealing with the problem?

63. Ms. EVATT expressed concern at the regulations governing membership of or conversion to a religion and the provisions concerning recognition of religious organizations, which entailed certain advantages such as subsidies for schools and broadcasting rights. Some religions, for example the Jehovah's Witnesses, had not yet been recognized. Why was such a high level of regulation needed and what criteria were applied in granting recognition?

64. Mr. BERCHTOLD (Austria) said that there was no legislation governing the activities of religious cults.

65. Mr. MANOUET (Austria) said that, since Austria had submitted its previous report, legislation had been enacted to prohibit Nazi propaganda. Denial of the Holocaust, for example, had been made a criminal offence and more severe penalties had been prescribed under section 283 of the Penal Code. The number of convictions had declined from 13 under section 283 and 16 under the anti-propaganda legislation in 1993 to one and seven respectively in 1997. Other amendments to the Penal Code had come into effect in March 1997 and he was as yet unable to report on their implementation.

66. Mr. BERCHTOLD (Austria) said that the existence of recognized and unrecognized religious communities was a vestige of the past and had no implications in practice. Under a recently enacted law, legal personality was also conferred on unrecognized religions.

67. The CHAIRPERSON thanked members of the delegation for their intensive and sustained dialogue with the Committee. The main positive aspects to be noted were the withdrawal of one of Austria's reservations and the favourable prospects for the withdrawal of the second reservation as soon as the issue of administrative tribunals had been settled. The new law on conscientious objectors was also a welcome development.

68. The subjects of concern were broadly the same as they had been in connection with the previous report. The failure to incorporate the Covenant in domestic law, coupled with the failure of the report to cover articles 26 and 27 and Austria's reservation on article 26, meant that some rights under the Covenant were not fully protected. Nor had the question of minorities been covered in the report. The minorities listed in the document provided by

the delegation were national minorities, but article 27 referred specifically to ethnic, religious or linguistic minorities, establishing an obligation to protect their right to enjoy their culture and to profess and practise their religion. The Penal Code continued to discriminate against homosexuals.

69. She trusted that the Austrian authorities would take due note of the Committee's comments and, in particular, of the concluding observations to be issued at the end of the session.

70. Mr. BERCHTOLD (Austria) said his delegation had greatly appreciated its dialogue with the Committee and hoped that their next encounter would be equally interesting and productive.

71. The Austrian delegation withdrew.

The meeting rose at 5.55 p.m.